

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-178-E - ORDER NO. 2005-149
MARCH 28, 2005

IN RE: Application of South Carolina Electric & Gas Company for Adjustments in the Company's Electric Rate Schedules and Tariffs.) ORDER DENYING) COLUMBIA ENERGY) LLC'S PETITION FOR) CLARIFICATION OR) RECONSIDERATION
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This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Clarification or Reconsideration (Petition) from Columbia Energy LLC (Columbia Energy) of Order No. 2005-2 in Docket No. 2004-178-E. Columbia Energy's Petition was filed pursuant to S.C. Code Ann. Section 58-27-2150 and 26 S.C. Code Ann. Regs. 103-881 and 103-836(A)(4). The Petition requests that the Commission rehear and/or reconsider Order No. 2005-2 in regard to the Commission's decision to open a generic docket to explore a formal RFP process for utilities that are considering alternatives for adding generating capacity.

In its Petition, Columbia Energy supports the Commission's decision to open a proceeding to investigate an RFP process for the addition of capacity. However, Columbia Energy asserts that the Commission's decision to conduct the examination in the form of a generic proceeding is in violation of the Administrative Procedures Act, South Carolina Code Section 1-23-10 *et seq.*, and is therefore affected by an error of law. Ultimately, in its Petition, Columbia Energy requests that the Commission reconsider its

decision in Order No. 2005-2 and clarify that it intends to proceed with a rulemaking proceeding leading to the promulgation of a regulation to address the competitive bidding process so that its decision will have the force and effect of law.

South Carolina Electric and Gas (SCE&G) filed a Response in Opposition to Columbia Energy's Petition. In short, SCE&G argues that Columbia Energy's Petition lacks legal or factual support and should be denied. SCE&G states that Columbia Energy's Petition is not supported by law. Further, SCE&G argues that the Commission is vested with the power to open a generic proceeding and investigate whether an RFP process should be implemented. Further, SCE&G asserts that Columbia Energy's Petition is not ripe for failure to exhaust its administrative remedies.

South Carolina Code Annotated Section 58-27-140 empowers the Commission with ascertaining and fixing just and reasonable standards, classifications, regulations, practices or service to be furnished, imposed, observed and followed by any or all electric utilities. In Order No. 2005-2, we held that the Commission would open a generic docket to explore a formal RFP process for utilities that are considering alternatives for adding generating capacity. We uphold that ruling in this Order and deny Columbia Energy's Petition.

During the proceeding, Columbia Energy requested that the Commission initiate a rulemaking proceeding on competitive bidding to require SCE&G to undertake a competitive bidding process as a means to procure additional capacity. We had a number of reasons for disposing of Columbia Energy's request regarding a rulemaking proceeding on competitive bidding. A competitive bidding process as a means to procure

additional capacity resources would affect all jurisdictional electric utilities, not just SCE&G. Second, all jurisdictional electric utilities should be afforded the opportunity to provide their opinions and options in a public information gathering proceeding regarding a competitive bidding process to ensure that we review as much information as we can before we decide if a competitive bidding process should indeed be implemented.

Columbia Energy argues in its Petition that if the Commission opens a generic docket to investigate the establishment of rules which would require an RFP, its decision would be a policy statement instead of a regulation. Petition at 3. First, the Commission did not state in Order No. 2005-2 that it would definitely institute a rulemaking process on competitive bidding. Nor did we state that we would indeed issue a rule or regulation governing an RFP process for competitive bidding. More importantly, we did not even state that we had heard all the information from affected investor-owned electric utilities to make a decision at this time as to whether an RFP process should be instituted. We stated in Order No. 2005-2 that “[t]he question of the merits of competitive bidding as a tool for identifying, pricing and procuring new capacity is not limited to SCE&G. If it has benefits that suggest it should be the required method for obtaining new capacity, these benefits will be common to all South Carolina jurisdictional electric utilities. ...Accordingly, as part of its examination of competitive bidding, the Commission will want to gather an array of options and opinions about the optimal way to implement a competitive bid process.” (Order No. 2005-2 at 51-52) As part of our examination/educational process regarding competitive bidding, we will open a generic docket for any person or company with standing to participate in order for the

Commission to make an informed educational decision on whether to pursue a rulemaking regarding RFPs and competitive bidding.

IT IS THEREFORE ORDERED THAT:

1. Columbia Energy's Petition for Clarification or Reconsideration is denied.
2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice-Chairman

(SEAL)